IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

CRL.A.No. 582 of 2000()

ST.411/1998 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

.....

APPELLANT: PETITIONER

N.SASIDHARAN, S/O.KUTTAYI
NADUKKANDY HOUSE,
P.O.GURUVAYOORAPPAN COLLEGE
VALAYANAD AMSOM AND DESOM
KOZHIKODE 673 014.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: RESPONDENTS

---

1. SHRI.V.PRAKASHAN, S/O.UNNIPERAVAN
   VADAKKAYIL HOUSE
   KAKKODI, KOZHIKODE.

2. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.M.P.MOHAMMED ASLAM
SRI.P.K.YUSUFF ISSUDDIN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.582 of 2000

Dated this the 24th day of October, 2007

JUDGMENT

The appellant is the complainant in S.T.No.411/98 in the file of Chief Judicial Magistrate Court, Kozhikode with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. It is the case of the complainant/appellant that the accused issued cheque dated 11.3.1998 for Rs.50,000/- towards discharge of liability and when the impugned cheque presented for encashment the same got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2, Exts. P1 to P6 and DW1.

4. It is the case set up by the complainant that a passenger bus bearing registration No.KLZ 8281 was purchased by him from the accused and a sum of Rs.50,000/- was paid as advance on 11.3.1998. Subsequently, the accused told him that he cannot part with the vehicle and then issued the cheque for

Rs.15,000/- to discharge the liability.

5. On the other hand, it is the case of the accused that he purchased the vehicle from one Sidharthan about 6 years back. But the R.C. owner was PW1. The amount outstanding towards hire purchase was Rs.50,000/- as he could not remit the hire purchase amount. PW1 who was the R.C. owner stopped the plying of the bus by intimating authorities. The hire purchase outfit had issued notice to PW1. PW1 wanted the accused to remit the amount but he was not having the required funds. PW1 proposed to remit the same and he obtained a blank cheque and signed papers as security. Subsequently, he came to know that PW1 has not remitted the amount towards the hire purchase dues. He has admitted his signature in Ext. P6 agreement which according to him was fabricated in the signed blank paper.

6. I find that the court below has rightly found that the appellant/complainant has set up a false case. In the cross examination PW1 has stated he was not aware of the R.C. is in his name and he pleaded ignorance about the R.C. owner. He has also stated that he did not enquire as to who was the owner of R.C. when purchased the vehicle.

7. In the circumstances, I find that the case set up by the respondent/accused appeared more probable. I find no reason to interfere in the findings of the court below.

The criminal appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl